

SOUTHERN CALIFORNIA TRIBAL CHAIRMEN'S ASSOCIATION

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David Freeman, Chairman
California Power Authority
901 P Street, Suite 142A
Sacramento, CA 95814

Submitted via Email

Subject: Comments of the Southern California Tribal Chairmen's Association On the California Power Authority Energy Resource Investment Plan

Dear Mr. Chairman:

The Southern California Tribal Chairmen's Association ("SCTCA") expresses its gratitude to the California Power Authority ("CPA") for this opportunity to comment on the Energy Resource Investment Plan ("Plan"). This letter will serve as SCTCA's written comments to the Plan and reiterates SCTCA's public comments made at the CPA meeting held in Los Angeles on January 23, 2002.

Background

The Southern California Tribal Chairmen's Association is a multi-service non-profit corporation that was established in 1972 to provide both a forum and a unified voice for a consortium of 19 federally recognized Indian tribes in southern California. The primary goals and objectives of SCTCA are the health, welfare, safety, education, culture, and economic prosperity of its tribal members. SCTCA coordinates and administers numerous successful grant programs for its members and the southern California Indian community, including Tribal Temporary Assistance to Needy Families), Law enforcement, Food Commodities, Day Care, Adult Vocational Training, Career Development Center, Low Income Home Energy Assistance Program (LIHEAP), Library Program and other services.

SCTCA is actively engaged in energy issues. SCTCA is a party to the Energy Efficiency, Low Income Assistance, Renewable Energy and Research Development and Demonstration Proceeding before the California Public Utilities Commission ("PUC") since 1998. SCTCA has hosted and sponsored numerous energy conferences, fairs and workshops over the past several years. Most recently, SCTCA completed a feasibility study and business plan ("Feasibility Study") exploring the potential for developing a tribally owned energy cooperative for its members. The SCTCA Feasibility Study focuses on several areas of energy development that reflect parts of the Plan, including energy efficiency, conservation, renewable energy and distributed generation.

Tribal Sovereignty and Government-to-Government Relationships

California has the largest Native American population in the country with 109 federally recognized tribal governments ("Tribes"). These Tribes possess inherent powers of limited sovereignty recognized by the U.S. Supreme Court for nearly 170 years, and are charged with the same responsibilities as any other governmental authority, which include planning the use of their resources to meet their social, economic cultural and political needs. Each Tribe is independent of one another, just as they are independent of the State.

Under federal law, tribes clearly have civil regulatory authority over tribal members on tribal lands. Montana v. U.S., 450 U.S. 544 (1981). A tribe has civil regulatory authority over non-Indians if a person enters into a consensual relationship with the tribe or its members through commercial dealing, contracts, leases or other arrangements. A tribe also has inherent power to exercise civil regulatory authority over the conduct of nonmembers on non-Indian lands within the reservation when that conduct threatens or has some direct effect on the political integrity, economic security or health or welfare of the tribe.

In an effort to achieve the mutual goals of the SCTCA and CPA, SCTCA requests that the CPA work through an improved relationship with Tribes that provides a framework for government-to-government relations to achieve these goals. SCTCA requests that the Tribes be included in discussions involving energy development in California, beginning with consultations for the Plan. Tribes have a unique government-to-government relationship with the federal government and its agencies. Federal Executive Orders 12875, 12866 and 13175 require federal agencies to respect the government-to-government relationship and improve consultation with tribal governments. Similarly, the California Assembly adopted Concurrent Resolution No. 185 on September 18, 2000, which recognizes tribal sovereignty of federally recognized tribes and "encourages all state agencies, when engaging in activities or developing policies affecting Native American tribal rights or trust resources, to do so in a knowledgeable, sensitive manner that is respectful of tribal sovereignty."

Most State agencies have not developed policies that encourage government-to-government relationships with Tribes. We hope that the CPA will bring about a change and help establish a precedent of working cooperatively with Tribes. In considering the development of this new working relationship with Tribes, we ask that the CPA adopt a policy similar to that adopted by the California Department of Transportation, which is based upon the Federal Executive Orders mentioned above and Concurrent Resolution No. 185. Additionally, we ask that the CPA recognize the unique sovereign status of Tribes and the cultural values of all Native American communities in California.

The Plan

Overall, SCTCA supports the vision outlined in the Plan, particularly those areas that reflect SCTCA's energy program development. We believe the proposed strategy for aggressive investment in and financing for energy efficiency and renewable energy resources is essential in realizing a more efficient and responsible energy future in California. SCTCA is committed to developing these programs.

The Tribes were not contacted or consulted in developing the Plan. The Plan does not mention tribal resources, tribal development or a consultation process by which the Tribes can be directly involved in energy development. Moreover, as discussed below, the Plan cites a study conducted by the PUC that clearly overlooks the current infrastructure needs on California Indian reservations. We hope that a revised Investment Plan will have adequately addressed these concerns.

We view transmission congestion as an impediment to energy development. SCTCA's primary concern with the current transmission system is that it is too constrained for new tribal energy projects. Appropriate interconnection standards are necessary for distributed generation and renewable energy projects. Additionally, information on the availability of transmission capacity for the interconnection of new projects should be made available. Currently, even small renewable energy projects have difficulty accessing energy purchasers. If authorizing CPA transmission financing can alleviate transmission congestion, then we conditionally support a change in legislation.

As discussed above, our support for transmission financing and development through the State is conditioned upon recognition by the State, utilities, municipalities, developers and any other participating party that tribal sovereignty and jurisdiction must be recognized and respected. Without this recognition and respect we cannot generally support transmission development.

Similarly, SCTCA conditionally supports additional legislation allowing for more flexible eminent domain procedures so long as tribal sovereignty and jurisdiction are not infringed upon.

SCTCA strongly disagrees with the PUC recommendation to bypass financing new natural gas projects in the State. According to the Plan, the basis of this recommendation is a CPUC study concluding there is an adequate natural gas infrastructure and competitive pricing statewide. This conclusion does not hold true for most of the tribes in southern California; it could not be further from the truth. Nearly all of the 19 SCTCA member tribes are without natural gas resources, resulting in some of the poorest communities in the State being forced to rely on more expensive electricity, propane and wood to heat their homes in the winter. In its pursuit of reducing electricity demand, the CPA should be considering the overwhelmingly high reliance on electricity for heat on Indian reservations. SCTCA recommends that the CPA seriously consider financing the development of natural gas infrastructure, which has never been made available to a large number of Indian communities.

Mr. Freeman made a comment at the January 23, 2002 Los Angeles public hearing regarding the Plan in response to SCTCA's position on the natural gas issue. Although seemingly well intentioned, Mr. Freeman's response reflects a misunderstanding by the State and non-Indian communities about Indian reservations and development. Mr. Freeman stated that rather than develop natural gas infrastructure on reservations, the State should be looking to the Tribes for ideas on renewable energy development and

traditional uses of natural resources. SCTCA reminds the CPA that California Indians have received few of the many benefits available through utilities, but have provided the resources for energy development. Reservation communities are located in what the PUC terms "hard to reach areas." These are traditionally underserved areas. To this day, 2 of the 34 reservations in Southern California are without electricity, and only recently did another reservation connect to the grid. Yet, reservation communities have suffered the negative impact caused by the generation and transmission of electricity by and for the utilities and the State: pollution from power plants, the loss of lands flooded for large hydroelectric dams, and crisscrossing power lines on tribal lands, sometimes without legal rights-of-way.

The CPA's vision of aggressively developing renewable energy resources is long overdue and is commendable. However, in the process, it is not necessary to continue to deny rural Indian reservations the same access to natural gas that is readily available to our neighbors located down the road.

Concluding Remarks

SCTCA presents 6 issues that should be addressed in developing the Plan in consultation with California tribes: 1) Energy development and transmission programs should honor sovereign governmental status—Tribes should be given the same acknowledgment as the State when recognizing local regulatory and legal jurisdiction; 2) Tribal land rights should not be adversely affected by changes in the energy industry; 3) Tribal cultural resources should not be harmed by energy operations; 4) Indian people are energy consumers; 5) Tribes are owners of energy resources and are seeking to use those resources, whether renewable or non-renewable, to generate electricity and economic development and need access to transmission. The U.S. Departments of Energy and Commerce have encouraged tribes to develop renewable energy projects through grants and government programs. Many Tribes are now in the process of developing renewable energy programs and are seeking to market the output of the generation. Also, tribal lands are being targeted for new gas fired generation projects due to tax and other incentives and tribal governments are seeking energy and utility generation joint ventures to allay high levels of unemployment on reservations and bring economic development. Tribes are interested in the ability to interconnect to the high voltage grid, and to do so for their often small and rural renewable projects in a manner that does not provide a disincentive for the sale of this power; and 6) Tribes seek a continued voice in the public processes regarding energy matters.

Tribes are relative newcomers to the energy industry. We are seeking to develop resources, projects and economies. We seek the protection of our culture and resources. Our interests are therefore different than those of established utilities. We seek to reserve a place for our interests in the money intensive electric power industry. Our concerns have not been those of large utility companies seeking more efficient ways to move bulk power across long distances. We are the most economically disadvantaged citizens to participate in energy matters. Our membership rarely has staff available or technical expertise necessary to properly protect all our interests or to take advantage of all our opportunities. While we have an important viewpoint and legal rights to protect, few

Tribes have sufficient funds to protect our interests. We therefore request funds from the CPA for tribal participation in State energy planning and implementation.

Sincerely,

Denis Turner,
Executive Director, SCTCA